

The 24th March, 1995

No 14/13/87-6Lab/407—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Managing Director, Haryana State Cooperative Handloom Weavers Apex Society Ltd., Panipat *Versus* Chander Bhan.

BEFORE SHRI B.R VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 377/90

Date of Receipt : 20-3-1990

Date of Decision : 1-3-1995

SHRI CHANDER BHAN S/O UDMI RAM C/O SHRI B. R. RAPRIA, ADVOCATE,  
BHIWANI .. Applicant

*versus*

MANAGING DIRECTOR, HARYANA STATE CO-OPERATIVE HANDLOOM  
WEAVERS APEX SOCIETY LTD., PANIPAT .. Respondent-Management:

Present :

Shri B. R. Rapria, for the workman.

Shri L. S. Bajla, for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (for short the Act) the Governor of Haryana referred the following dispute between Chander Bhan and the above mentioned management for adjudication to this Court, —*vide* Labour Department No. Hsr./12-90/11089-94, dated 14th March, 1990 :—

Whether termination of services of Chander Bhan is justified and in order? If not, to what relief is he entitled?

2. It is the case of the workman that he was appointed as Helper by the management on 1st October, 1986 and was posted in the Sales Department of the Weaver Society at Hansi. However, his services were terminated on 24th June, 1987 without assigning any reason and without holding any enquiry. It is also claimed by the workman that no notice was given to him prior to terminating his services nor any retrenchment compensation was paid to him. The workman, therefore, claimed that termination of his services amounted to "retrenchment" being in violation of Section 25-F of the Act. It was also claimed that there had been violation of Section 25-G of the Act, as some employees, juniors to him, were retained in service. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. In the written statement filed by the management, it was stated that the workman was appointed for 89 days on 1st October, 1986 and he was relieved from the job on 2nd January, 1987. It was followed by another appointment for 89 days,—*vide* letter dated 15th January, 1987 and the workman accordingly relieved on 14th April, 1987 in accordance with the terms of appointment letter. The workman was again appointed for third spell of 89 days,—*vide* letter dated 18th April, 1987 and he was relieved from the job on 24th June, 1987,—*vide* letter of even date. The management contended that the services of the workman could be terminated without notice in accordance with the conditions laid down in his appointment letter because he was appointed for fixed periods. It was, therefore, claimed that the termination of services of the workman was legal and there had been no violation of any provisions of the Act. In the preliminary objections, it was stated that the workman had no cause of action and that the reference was not maintainable.

6. On the above pleadings of the parties, the following issues were framed on 17th January, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the petitioner has no cause of action and the claim is not maintainable.
- (3) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri B. R. Rapria, authorised representative of the workman and Shri L. S. Bajia, authorised representative of the management and have gone through the case file. My findings on the above issues are as under :—

**Issue No. 1 :**

6. Chander Bhan, workman was appeared as WW-1 and deposed that he was appointed on 1st October, 1986 and that his services were terminated on 24th June, 1987, without serving him any notice or charge-sheet. It is, however, admitted by him that he was appointed for 89 days and has that he was given fresh appointment after 2-3 days of the expiry of the said period.

7. On behalf of the management Rekh Raj, MW-1 was examined and he testified the three appointment letters and three termination orders of the workman as MW 1 to MW 6 and has claimed that the workman was relieved in accordance with rules framed by the corporation.

8. From the above evidence, it is evident that the workman was appointed for 89 days initially and after gap of few days, he was given fresh appointment for another 89 days. Admittedly, the workman was offered appointment for 89 days for third spell and when the total working days of the workman are counted for the period from 6th October, 1986 to 24th June, 1987, it would be manifest that his total working days come to 247 during the said period. In this way, the workman had put in more than 240 days services during the preceding twelve months from 24th June, 1987. The management was legally bound to comply with the provisions of Section 25 F of the Act, which is mandatory provision. Admittedly, the management did not do so. There is also no plea of the management that the workman on which the workman was appointed, stood accomplished or that the post stood abolished.

9. The main plea of the management is that the services of the workman were terminated in accordance with the terms of his appointment letter and that he was appointed for fixed period. In other words the plea of the management though not specifically pleaded in the written statement, is that the present case is covered under clause (bb) of Section 2 (oo) of the Act. To buttress this argument, Shri L. S. Bajia, Authorised Representative of the management referred to the authority of our High Court reported as *Banarsi Dass versus Presiding Officer Labour Court, Ambala 1994 (4) RSJ-465*.

10. I have gone through the above authority carefully. The facts in this case are quite distinguishable because in this case, it was admitted fact that the workman has not put in 240 days of service, so as to attract the provisions of Section 25 F of the Act and it was held that services of the workman had been terminated as no longer required under a stipulation in that behalf contained in the order of appointment. However, in our case the workman had acquired the statutory protection under Section 25 F of the Act and his services could not be terminated without complying with its mandatory provisions and as already observed, it is not the case management the work on which the workman was appointed, ceased or stood accomplished. No assistance therefore, can be drawn by the management from the above authority.

11. In the light of discussion above, I hold that the termination of services of the workman is illegal and he is entitled to reinstatement with other consequential benefits. As regards back wages it is to be noted that the workman had raised demand notice only on 4th October, 1989, though his services were terminated on 24th June, 1987. No explanation is forthcoming from the workman for this long silence. I am, therefore of the view that the workman would be entitled to back wages from 4th October, 1989, the date when he raised demand notice and he will not be entitled to any back wages for the period from 24th June, 1987 to 3rd October, 1989. This issue is answered accordingly.

**Issue No. 2 :**

12. This issue was not pressed by the authorised representative of the management and was conceded to by him during arguments. This issue is, therefore, answered against the management.

**Issue No. 3-Relief:**

13. In view of my findings on the above issues, the termination of services of the petitioner, is held as illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith, with benefit continuity of service and other consequential benefits. The petitioner will not be entitled to any wages for the period from 24th June, 1987 to 3rd October, 1989. He will however, be entitled to full back wages from 4th October, 1989 onwards. The reference is answered accordingly with no order as to costs.

**B. R. VOHRA,**

Dated the 1st March, 1995.

Presiding Officer,  
Industrial Tribunal cum  
Labour Court Hisar.

Endorsement No. 302, dated the 6th March, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner and secretary to Government Haryana Labour & Employment Department, Chandigarh for necessary action.

The 1st March, 1995

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum  
Labour Court, Hisar.

No. 14/13/87-6 Lab./415.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, in respect of the dispute between the workman and the management of M/s. President, The Farwan Coop. Credit, and Service Society Ltd. Farwan (Sosa) *versus* Pat Ram.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 161 of 1992

Date of receipt: 16-7-92

Date of decision : 1-3-95

SHRI PAT RAM SON OF SHRI BUDH RAM, VILLAGE FARWAN, TEHSIL AND DISTRICT SIRSA

*Applicant*

*versus*

PRESIDENT, THE FARWAN COOP. CREDIT AND SERVICE SOCIETY LTD., FARWAN, DISTRICT SIRSA

*Respondent/Management*

*Present :*

Shri P. K. Mehta for the workman.

None, for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of the section (1) of section 10 of the Industrial disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Pat Ram and the above mentioned management for adjudication to this Court, *vide* Labour Department, letter No. 29533—38, dated 30th June, 1992:—

Whether termination of services of Pat Ram is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was appointed as Chowkidar on 18th March, 1988 by the management and that his service record was very good. He further alleged that his services were terminated on 9th August, 1991 with effect from 30th January, 1991 and later on the management reinstated him on the same post. He further pleaded that again on 6th September, 1993, the management terminated his service in an illegal manner without complying with Section 25-F of the Act and that the action of the management was illegal, *malafide* and against the principles of natural justice. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The case was being contested and was fixed for filing of written statement on payment of Rs. 100 as conditional costs, when the management failed to file written statement and to pay costs and therefore, the defence of the management was struck off,—*vide* order dated 3rd May, 1994.

4. The petitioner led evidence and I have heard Shri P. K. Mehta, A.R. of the workman and have gone through the case file.

5. Patram, workman appeared as WW1 and has stated on oath that he was appointed as Chowkidar by the management on 18th March, 1988 and his services were terminated on 30th January, 1991. He further stated that he was taken back on duty on 27th February, 1992 and that his services were again terminated on 6th September, 1993. He also stated that no notice was given to him, nor any retrenchment compensation was paid to him. He also stated that his pay was Rs. 1,005 per month at the time of termination of his services.

6. In these circumstances, when the defence of the management was struck off and the management failed to contest the case, I have no reason to disbelieve the statement of the workman that he worked from 18th March, 1988 to 6th September, 1993. Thus, I hold that the petitioner had worked for more than 240 days during the proceeding 12 months and therefore, he was protected under the provisions of the Act. The management was duty bound to comply with the provisions of Section 25-F of the Act. The management did not do so. The non-compliance of the mandatory provisions of Section 25-F of the Act, has rendered the termination of services of the workman as illegal and the petitioner is entitled to reinstatement with full back wages.

7. In view of the above discussion, the termination of services of the petitioner is held as illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly with no order as to costs.

B.R.VOHRA,

The 1st March, 1995.

Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Hisar.

Endst. No. , dated

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Hisar.

The 23rd July, 1995

No. 14/13/87-6 Lab./443.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon, in respect of the dispute between the workman and the management of M/s. Gopal Clothing Company Pvt. Ltd., 274, Udyog Vihar, Dundaheera, Gurgaon *versus* B. K. Gautam.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 434 of 1988

*between*

B. K. GAUTAM, C/O SHRI MAHAVIR TYAGI, ORGANISOR, INTUC, DEHLI ROAD, GURGAON  
AND THE MANAGEMENT OF M/S. GOPAL CLOTHING COMPANY, PVT. LTD., 274, UD YOG  
VIHAR, DUNDAHERA, GURGAON

*Present :*

Shri Mahavir Tyagi, A.R., for the workman.

Shri H. L. Dang, A.R., for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) Section 10 of the Industrial Disputes Act, 1947, (in short 'the Act'), the Governor of Haryana, referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—vide Haryana Government endst. No. 36856—61, dated 9th August, 1988.

Whether termination of services of Shri B. K. Gautam is legal and justified ? If not, to what relief is he entitled ?

3. According to the claim statement, the petitioner was appointed as Tailor on 7th July, 1986 and his services were terminated on 16th March, 1988. He was drawing a salary of Rs. 535/- p.m. It was pleaded that no notice or pay had been paid to him, therefore, his termination was illegal. The petitioner has sought his reinstatement with full back wages.

3. Upon notice, the management appeared and filed their written statement and took up the plea that the petitioner was not a workman as he had resigned the job. It was pleaded that the petitioner was appointed on 1st January, 1987 and had submitted his resignation on 9th November, 1987 and he had received his full and final dues the same day.

4. In the rejoinder, it was pleaded that the petitioner had never resigned from his job and the plea taken up by the management was wrong.

5. On these pleadings, following issue was framed :—

1. Whether termination of services of Shri B. K. Gautam is legal and justified ? If not, to what relief is he entitled ?

6. I have heard authorised representatives of the parties and have gone through the evidence on record. My finding on the issue is as under :—

7. The management has examined Ram Ji Dube MW-1, who deposed that the petitioner was employed as a helper on 1st January, 1987. He proved the ESI declaration from Ex. M-1 and pointed out that his date of joining has been recorded on 1st January, 1987. He also proved the resignation letter, dated 9th November, 1987, Ex. M-2. Voucher Ex. M-3,—vide which, the petitioner had received the amount due and Ex. M-4, which contains full and final settlement of the account. He further introduced in his statement attendance record from November, 1987 to March, 1988, Ex. M-5 and wage register Ex. M-6.

8. After the close of the evidence of the management, case was fixed for the evidence of the workman. Several opportunities were granted and ultimately evidence of the workman was closed by Court order.

9. There is no rebuttal to the evidence led by the management. The management has produced material on the file to show that it was a case of resignation. Resignation letter has been produced on the file. ESI declaration from specifically shows the date of joining on 1st January, 1987. It also bears the signature of the petitioner. For reasons best known to the workman, the workman did not appear in the witness box in support of his pleadings. In view of the material placed on the file, it is clear that it was not a case of termination, but since the petitioner had submitted his resignation, therefore, the management was not under any duty to serve any notice or pay retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act. Accordingly, I find that the petitioner is not entitled to any relief. Reference is answered accordingly with no order as to costs.

The 10th February, 1995

ANITA CHAUDHARY,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Gurgaon.

Endst. No. 248, dated 28th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Gurgaon.